

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 July 20, 2023

17 2:12 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: ALIANNA AND ART

1 HEARING re Omnibus Hearing.

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3 HEARING re Doc. #514 Notice Of Agenda.

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5 HEARING re Scheduling Conference Re: Fee Application; Claim
6 Objections; Disclosure Statement.

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8 HEARING re Doc. #483 Motion To Amend The Order Authorizing
9 The Debtors To Retain And Compensate Certain Professionals
10 Utilized In The Ordinary Course Of Business.

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12 HEARING re Doc. #289 Motion For Relief From The Automatic
13 Stay Re: FTX Trading.

14

15 HEARING re Doc. #373 Motion To Authorize / Motion To
16 Establish Procedures And A Schedule For Estimating The
17 Amount Of The FTX Debtors Claims Against The Debtors Under
18 Bankruptcy Code Sections 105(a) And 502(c) And Bankruptcy
19 Rule 3018.

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Sean
3 Lane in the United States Bankruptcy Court for the Southern
4 District of New York and we're here for a two o'clock
5 hearing in Genesis Global Holdco, a Chapter 11 case. And
6 so, we'll start this hearing as we always do with
7 appearances. So let me find out who's here on behalf of the
8 Debtor.

9 MS. VANLARE: Good afternoon, Your Honor. Jane
10 VanLare, Cleary Gottlieb Steen & Hamilton on behalf of the
11 Debtors.

12 THE COURT: Right. On behalf of the Official
13 Committee of Unsecured Creditors?

14 MR. SHORE: Good afternoon, Your Honor. Chris
15 Shore from White & Case on behalf of the UCC.

16 THE COURT: All right, good afternoon, and on
17 behalf of the Ad Hoc Committee?

18 MS. VOLIN: Good afternoon, Your Honor. Megan
19 Volin, Proskauer Rose, on behalf of the Ad Hoc Group.

20 THE COURT: All right, good afternoon. On behalf
21 of the Debtors in the FTX case?

22 MR. DIETDERICH: Good afternoon. Andy Dietderich,
23 Brian Glueckstein, and Ben Beller, Sullivan and Cromwell.

24 THE COURT: All right, good afternoon. And I
25 believe there's an Unofficial Committee of Unsecured

1 Creditors for FTX, there a counsel here for that group.

2 MR. PASQUALE: Yes, Your Honor, good afternoon.

3 For the Official Committee of Unsecured Creditors in the FTX
4 case, Ken Pasquale from Paul Hastings.

5 THE COURT: All right, good afternoon. And as is
6 usual, or maybe -- oh, Digital Currency Group. Let me see
7 if there's anyone here for Digital Currency Group.

8 MR. SIDDIQUI: Good afternoon, Your Honor.
9 Furqaan Siddiqui at Weil Gotshal & Manges on behalf of
10 Digital Currency Group.

11 THE COURT: All right, good afternoon. So let me
12 find out if there's anyone else here who wishes to make an
13 appearance as they anticipate speaking at today's hearing.

14 MR. MARGOLIN: Good afternoon, Your Honor.
15 Jeffrey Margolin, Hughes Hubbard & Reed on behalf of Gemini
16 Trust Company.

17 THE COURT: All right. Good afternoon. Anyone
18 else? All right, good afternoon to you all. So I have a
19 copy of the agenda which is at Docket 514 that sets forth a
20 number of different things and a couple of which are
21 conversations that are continuations of conversations that
22 we've had in the past in other hearings, and as I think we
23 discussed at those hearings, my intention wasn't to reargue
24 those today but rather to talk about any subsequent
25 developments and see where we are.

1 But the motions were very ably argued previously
2 and that's, particularly the lift stay motion that's at Item
3 No. 2 on the docket and the estimation motion. And so --
4 but I know we have an ordinary course motion which is at
5 docket -- listed at No. 1 on the agenda. So with all that
6 as prologue, let me turn it over to Debtors' counsel to walk
7 us through what we need to address here today.

8 MS. VANLARE: Thank you, Your Honor. Jane
9 VanLare, Cleary Gottlieb. And also, on behalf of the
10 Debtors in the courtroom we have Mr. Luke Barefoot and our
11 colleague, Ms. Deandra Fike.

12 THE COURT: All right, and I would just say,
13 Counsel, I'm having a little trouble hearing you. I can
14 make it out, but it's sort of at the very fringes of what I
15 can make out, so we'll just monitor it and hope that that's
16 -- doesn't become an issue.

17 MS. VANLARE: Thank you, Your Honor. Just let me
18 know. It may be an issue --

19 THE COURT: Yep. You just -- in fact, it's almost
20 as if on cue, you just dropped off and perhaps it's a me
21 problem. I don't know if folks elsewhere are having trouble
22 hearing.

23 MR. DIETDERICH: We have the same difficulty, Your
24 Honor.

25 THE COURT: All right. That's one of the joys of

1 this era of practicing law is you never quite know. I know
2 the Court went blank the other day, I went blank for about
3 15 seconds and it was clearly on us, so I never quite know.
4 So, Ms. VanLare, it might be advisable, if you have an
5 alternative way to be heard, I'm happy to take a brief
6 moment for you to do that.

7 MS. VANLARE: Your Honor, if you can hear me, why
8 don't I pass the microphone over to Ms. Fike to present the
9 ordinary course motion and in the meantime, I will dial up.

10 THE COURT: Perfect. Sounds eminently sensible.
11 All right. So turning to the ordinary course motion,
12 Counsel?

13 MS. FIKE: Yes, Your Honor. Good afternoon. This
14 is Deandra Fike speaking, of Cleary Gottlieb, on behalf of
15 the Debtor. Let me know if you can hear me okay.

16 THE COURT: I can hear you just fine. Thank you.

17 MS. FIKE: Great. I will be presenting Item 1 on
18 the agenda, the Debtors' motion to amend the author order --
19 the order authorizing the Debtors to retain and compensate
20 certain professionals utilized in the ordinary course of
21 business, which should be tab one of Your Honor's binder and
22 is located at the Docket No. 483. As Your Honor will
23 recall, the Debtors previously filed the application to
24 employ professionals used in the ordinary course of business
25 at Docket No. 65 on February 8th of this year, which was

1 subsequently entered by this Court at Docket No. 102 on
2 February 24th also of this year.

3 The Debtors are now moving to amend such order to
4 first increase the OCP monthly cap set forth in the OCP
5 order from \$100,000 per month to \$150,000 per month on a
6 three-month rolling average, and secondly, to increase the
7 overall OCP case cap from \$300,000 to \$500,000.

8 The Debtors believe such increases to be in the
9 best interests of the Debtors' estates, their creditors, and
10 other parties in interest, as it will allow the
11 professionals to continue efficiently providing their
12 critical services without having to continually expend
13 additional time and incur additional cost related to the
14 preparation of full retention and fee applications and
15 statements.

16 Further, such increases are in line with more
17 realistic amounts routinely approved for professionals in
18 cases of similar duration and complexity, as further
19 outlined in the motion to amend. The Debtors consulted with
20 the Office of the U.S. Trustee, counsel for the Committee,
21 and counsel for Gemini prior to filing the motion to amend,
22 none of which had any objection to the motion.

23 The motion is now before Your Honor uncontested.
24 And with that, unless Your Honor has any questions, the
25 Debtors respectfully request that Your Honor approve the

1 motion and enter an order substantiating the form of the
2 proposed order filed as Exhibit A to the motion to amend.

3 THE COURT: All right. Thank you very much. Is
4 there any party that wishes to be heard in connection with
5 the motion? All right, hearing no responses and noting as
6 was just represented that the U.S. Trustee's Office, the
7 Committee, and counsel for Gemini Trust Company, in fact,
8 had no objection to the relief requested, I'm happy to grant
9 the relief. I do know that it is consistent with the cap
10 set in other cases.

11 We obviously do that on a going forward basis and
12 it's perfectly fine, appropriate, and indeed understandable
13 to start out with a lower number and then seek leave to make
14 -- to change those numbers on the fly as you go, but these
15 numbers are consistent with the cases you identify in
16 Paragraph 11 of your motion and I'm happy to approve it as
17 being a good idea for these cases and appropriate under all
18 the facts and circumstances. So, that motion is approved.
19 Thank you very much, Counsel.

20 MS. FIKE: Thank you, Your Honor. I'll pass the
21 virtual podium.

22 THE COURT: All right.

23 MS. VANLARE: Your Honor, hello again. Is this
24 better?

25 THE COURT: That is much better. Thank you very

1 much.

2 MS. VANLARE: Excellent. Thank you for your
3 patience. Appreciate it. So next on the agenda, Your
4 Honor, are the two FTX related motions, the motion of the
5 FTX debtors to lift the stay and our motion for estimation.
6 As Your Honor noted, I think this was intended as a status
7 conference. We have been continuing to exchange
8 information. We have had some meet and confers on --
9 relating to discovery and the issues.

10 Your Honor, what I would propose in terms of next
11 steps, we have had some discussions on the issues that we
12 would propose to be -- that would be the basis for the
13 estimation motion. I think the FTX debtors have different
14 views, and -- as I'm sure won't be surprising. So, what I
15 would propose on our side, what I think would be helpful is
16 if we had an opportunity to submit a letter brief on the
17 issues that we think are the ones that should go forward and
18 a proposed schedule and we would invite, counsel to the FTX
19 debtors to do the same.

20 And then we would ask Your Honor to hold another
21 status conference, in which you could sort of take a look at
22 the issues and the schedule and then we could have a more
23 concrete discussion. And we would ask that we proceed with
24 that next week, obviously subject to Your Honor's
25 availability, but we think it would be helpful to have the

1 letter briefs that I just described with the issues on file
2 on Tuesday and then a conference with Your Honor perhaps
3 later that week. I know we previously had time on Thursday.
4 I don't know if that time is available, but it would be
5 subject to Your Honor's availability.

6 THE COURT: All right. So I'll hear from FTX in
7 one minute, obviously, but I was thinking about these issues
8 the other day and realized that when I was checking my notes
9 that you had made a comment and I think it was in connection
10 with the -- that Exhibit B which had the potential defenses
11 to preference claims. And when you were describing things
12 you mentioned at one point that there were some things that
13 you -- if I remember it correctly, that you thought were
14 some purely legal issues, right? There's -- there wasn't a
15 whole lot of factual dispute, but rather there were
16 particular legal issues.

17 The reason -- and when I thought about that a
18 little bit further, it occurred to me that there -- what
19 estimation really is designed to do particularly or what
20 it's particularly good at is getting a handle on a very
21 unwieldy factual record, saying Judge, it's going to take a
22 long time to figure that out and we want to essentially
23 provide you with a smaller version of that where you can get
24 a sense of what the facts are and then make an estimate of
25 what you think is appropriate.

1 It occurs to me that for the things that maybe
2 fall either exclusively or much closer to the solely legal
3 issue, depending on the schedule in the case, you know, lots
4 of people ask for things expedited and they're not
5 estimations, but they're gating issues for something, either
6 confirmation, distribution, whatever it is; that it may be
7 that there are some issues that are simply amenable being
8 put on an expedited track to decide on the merits.

9 And the reason why I mentioned that is because
10 estimation, while it can be beneficial, it can also be a bit
11 of an albatross, meaning that as you go forward everybody
12 has this this other uncertainty that whatever the outcome,
13 the other side will say estimation was done improperly and
14 you raise a whole other set of collateral issues.

15 And regardless of who wins or loses, what we all
16 want to do is to do this in the most efficient way so that
17 you don't have a lot of collateral issues. We -- you
18 present me the issues that need to be decided that are
19 central and when I decide them, unless you resolve them.

20 So, I don't have a -- when I'm going through the
21 list and my notes of prior conversations, I didn't have any
22 magic application of this thought to the list you had, but I
23 wanted to throw it out for the consideration of the Debtors
24 and FTX that there may be some ones that you just say, well,
25 jeez, we were going to get so close anyway, we might as well

1 just tee this up on the merits and maybe there's some
2 particular merit things that we just -- Judge, we just need
3 quick answers on these.

4 That's fine. That happens. And that for ones
5 that might have -- then you could really think about
6 estimation more as ones that have more unwieldy and
7 extensive factual -- potential factual records that, where
8 an estimation does give you and is sort of in the classic
9 estimation wheelhouse of shortening procedures and
10 shortening time and getting you decisions.

11 And so, I throw that out there for your
12 consideration as you have your discussions and you think
13 about what makes sense.

14 MS. VANLARE: Appreciate that very much, Your
15 Honor. We'll certainly take that into account as we
16 consider what our revised proposed schedule should look like
17 and see if we want to modify our proposal based on that
18 guidance.

19 THE COURT: All right. And with that, I'll turn
20 it over to Mr. Dietderich and other folks in the room where
21 he sits, whoever wants to jump in on your thoughts about
22 next steps.

23 MR. DIETDERICH: Thank you, Your Honor. For the
24 record, Andy Dietderich, Sullivan & Cromwell. Your Honor,
25 we were not consulted with this proposal to submit letter

1 briefs to Your Honor. It would have been easy to have that
2 discussion with us before the hearing today, but it strikes
3 us as news today. We would be happy to talk about that kind
4 of a process. We probably need more time than Tuesday to
5 submit that, just because of the work streams that we're
6 managing here.

7 Again, it takes us by surprise. But we're
8 perfectly fine with submitting to Your Honor something
9 organized and in writing about a path forward, what issues
10 should be potentially resolved by Your Honor, what issues
11 should be resolved by Judge Dorsey in Delaware, and to lay
12 that out, and if there's a distinction to make a sensible
13 distinction between legal issues and factual issues, you
14 know, we can do that in the same submission.

15 I do think, I do think, Your Honor, that under
16 your guidance a little bit, we have made real progress on a
17 number of fronts here. We know a lot more about the Genesis
18 case than we did when we started. It's still a little bit
19 of a black box to us, but we do know more. We still
20 continue to believe that part of this process should be
21 finding a way to not impede it and to make sure that
22 whatever we're doing on the resolution of this issue can
23 kind of have our cake and eat it too in terms of being --
24 not touching it in issues that are central to FTX but also
25 not slowing down the Genesis case.

1 So, we're very committed to that project and we
2 are -- have made some progress, as Ms. VanLare mentioned, in
3 identifying what is in dispute. We did send a list of
4 issues, kind of the FTX specific issues, our sacred issues,
5 if you will, for the FTX case. We did sent that across to
6 Ms. VanLare on Friday. We don't have a detailed response
7 from her yet, but we will look at that again and make that
8 the heart of our submission to Your Honor next week. So,
9 we're fine, but we would ask to maybe do that at the end of
10 next week rather than Tuesday if that's all right.

11 THE COURT: Well, let me -- so I can help you on
12 the schedule. I'm at a Federal Judicial Center conference
13 Monday, Tuesday, and Wednesday, so my thought would be let's
14 sort of split the baby, have submissions due on Thursday and
15 then commit to having a get-together the following week to
16 talk about things. And what that will also do is allow you
17 to get a chance to look at each other's submissions and see
18 if you can further narrow the gap. I'm always happy to have
19 updates that say, Judge, we submitted something that raises
20 a whole bunch of potential flashpoints and we've resolved
21 some of those, and even if we need your guidance on others.

22 So, I know that there was -- and this was no doubt
23 going to be on everybody's agenda anyway -- discussions
24 about further proceedings and I think the thought was in the
25 aftermath of various conversations the other day to move the

1 disclosure statement hearing and I believe that chambers --
2 and there's conversations back and forth and I think you
3 landed on August 4th as a date, so I would say we could
4 potentially use that date as a time to chat.

5 I'm happy if we need to chat earlier and so I'm,
6 I'm happy if we want to stick in another date, if -- a
7 little earlier than that, if that would be helpful, but
8 certainly we wouldn't go past August 4th in terms of having
9 a date to talk. So, what I might do is if you give me a
10 second, I can check. Got several calendars here and I need
11 to check one I have that's not in front of me.

12 Maybe I'll give you -- we'll use August 4th as the
13 date, but I'll give you an earlier date as well. And if
14 you're still talking and making progress, you'll just tell
15 me we're going to do it in August 4th, but I'll be available
16 to have a conversation if I can be of any use, and you all
17 are much closer to these issues. I'm not part of the
18 negotiations. So, you're in a much better position to let
19 me know if getting together is -- whether it's the right
20 time to do that.

21 If you're stuck, then the answer is yeah, fine;
22 but if you're still making progress, you can just release
23 the date. You just give chambers a call and let us know
24 that. So if you give me one second.

25 And so, what I could do is schedule something for,

1 perhaps for Wednesday morning, August 2nd, say Wednesday,
2 August 2nd at ten o'clock or eleven o'clock, whatever works
3 for folks, or the afternoon as well. And if you're still
4 working, you just call me and release the date and if -- but
5 if it's helpful to chat then, we can chat then.

6 MS. VANLARE: Thank you, Your Honor. I think that
7 makes sense. I would note also, I was not envisioning
8 something much more extensive than the chart that you had
9 looked at previously and that Mr. Dietderich just referenced
10 as far as what their views are. So I -- that was why I
11 thought that we didn't really need that much more time but,
12 but happy to use extra time. I'm just -- I just wanted to
13 specify it so that we don't have a differing understanding
14 of what Your Honor will receive next Thursday in terms of
15 length and --

16 THE COURT: Yeah, I think anything that's
17 submitted would contain -- the issue would contain a sort of
18 summary of what you think resolution of that issues would
19 entail, whether it would include witness testimony or it's a
20 pure legal issue. If it does include witness testimony, to
21 what extent is it the proposal to have two witnesses a side,
22 is it half a day, a full day, three days?

23 And whether to inject the last comment into this,
24 whether it's something that really would be the subject of
25 estimation or really just something that would be a

1 decision. Again, so we could not have the albatross,
2 potential albatross investigation onto things that maybe
3 don't benefit really from it.

4 And so, the only other thing I would think of is
5 if, in addressing a particular issue, you all know it's a
6 flash point for the other side, you might include in your
7 explanation a way to address the concerns of the other side.
8 Say, we know that Mr. Dietderich and his team have
9 identified certain issues and this is why we think -- how we
10 could handle them, or avoid them or not avoid them because
11 we think we can't avoid them, what whatever it is. Just so
12 parties engage with each other in a meaningful way and so
13 these submissions are a step forward. So Ms. VanLare, does
14 that make sense to you?

15 MS. VANLARE: That's perfect and very, very
16 helpful. Thank you, Your Honor.

17 THE COURT: All right. Mr. Dietderich, does that
18 make sense to you?

19 MR. DIETDERICH: Absolutely.

20 THE COURT: All right. So with that, what I will
21 do is I will continue to adjourn the motions to the next
22 time we get together. And I -- what I will do is I'm not --
23 my intent is to never surprise somebody by ruling. When you
24 carry motions, sometimes you never quite know when is the
25 judge going to rule. My intent will be that any time we're

1 getting together for status and to have these kinds of
2 conversations, you're not going to get a ruling on the
3 motions.

4 There may come a time when it is appropriate and
5 necessary for me to do so, but I will always give people the
6 heads up because again, I don't know where you are in
7 negotiations and the last thing I want to do is have you all
8 make progress and then surprise somebody with a ruling that
9 undoes that progress.

10 So, that's my commitment to you. Obviously,
11 you're all -- you both filed motions and there may come a
12 time when you just say, Judge, this is time for you to rule
13 and that's fine, but I promise not to surprise anybody with
14 that and thus potentially undo all the good work that you've
15 done.

16 So, my intent the next time we get together,
17 whether it's the 2nd or the 4th, is not to rule. And again,
18 if I'm going to make a ruling, I will pick a time and it'll
19 be for that, specifically for that purpose. So just wanted
20 to make sure everybody's on the same page.

21 And so, with that, Ms. VanLare, is there anything
22 else to discuss on these two remaining agenda items that you
23 think would be helpful?

24 MS. VANLARE: I don't believe so, Your Honor.
25 Thank you.

1 THE COURT: All right. Mr. Dietderich, anything
2 from you?

3 MR. DIETDERICH: No, Your Honor. That's all very
4 clear and thank you.

5 THE COURT: All right. Thank you all very much
6 for your continued discussions on what are very important
7 issues to this case and to the FTX case. You all have
8 enough challenging things to do, so I hope that we'll end up
9 at a place that regardless of what has to be resolved, makes
10 some progress and take at least some things off the list of
11 topics to litigate over. So, we'll see how it goes. Thank
12 you very much. Be well and see you soon.

13 MS. VANLARE: Thank you, Your Honor.

14 MR. DIETDERICH: Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at
16 2:37 PM)

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I N D E X

RULINGS

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Line

Compensation of ordinary course

professionals, granted

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: July 26, 2023